IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 32931 of 2006(U)

O.S.479/97 OF PRINCIPAL SUB COURT, THRISSUR

PETITIONER:

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1. P.K.RAVEENDRAN, S/O. PALLIKKADAVATH KRISHNANKUTTY, ENGANDIYOOR AMSOM AND DESOM, CHAVAKKAD TALUK.

2. P.G.SATHEESAN, S/O. PANAKKAPARAMBIL GOPALAN, THRITHALLOOR DESOM, VADANAPPILLY AMSOM, CHAVAKKAD TALUK.

BY ADV. SRI.T.K.MARTHANDAN UNNITHAN

RESPONDENTS:

POULOSE MEMORIAL FINANCIAL ENTERPRISES, REPRESENTED BY PROPRIETOR, DAVIS, S/O. LATE OUTHOODAN POULOSE, KANDASSANKADAVU DESOM, KARAMUCK VILLAGE, THRISSUR.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.32931 OF 2006

Dated 12th December 2006

JUDGMENT

Petitioners are defendants in O.S.479/97 on the file of Sub court, Trissur. This petition is filed under Article 227 of Constitution of India challenging Exts.P2, P5 and P7 orders passed by the learned Sub Judge. Ext.P2 order was passed in Ext.P3 application filed by petitioners, to receive additional written statement under Order VIII of Rule 9 of Code of Civil Procedure. Ext.P5 order was passed in I.A.6239/06, an application filed by petitioners to direct the plaintiff to produce certain documents. Ext.P7 order was passed in I.A.6240/06, an application to send the disputed documents to an expert for the opinion. Under Ext.P2 order learned Sub Judge dismissed the prayer to receive additional written statement. Learned counsel appearing for petitioners vehemently argued that in the circumstance of the case, learned Sub Judge should have allowed Ext.P3 application, as contentions sought to be raised by the additional written statement are

necessary for a just decision of the case. Arguments was that when written statement was field, petitioners denied execution of the document and after receipt of the report of expert from Forensic Science Laboratory finding that signature seen in the document is similar to that of petitioners, it is necessary to file additional written statement. It was also argued that document provides for unconscionable interest and so it is necessary to challenge the same and therefore in the interest of justice court below should have allowed the application. Learned counsel also submitted that though the petition was submitted as an application to receive additional written statement, in effect it was an application to amend the original written statement and the rigour of amendment of a plaint is not applicable to amendment of the written statement and even inconsistent pleading could be introduced by way of amendment in the written statement and learned Sub Judge should have allowed Exts.P3 and P4 application and Ext.P2 and P4 orders are to be set aside.

2. On hearing learned counsel appearing for petitioner I do not find any infirmity in Ext.P2 order warranting interference in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. Even though it was vehemently argued that Ext.P3 application is to be treated as an application under Order VI Rule 17 of the Code, on going though Ext.P3 I cannot agree with the submission. Affidavit in support of that application was filed by the counsel for petitioner with the full knowledge that the petition was filed not under Order VI Rule 17, but is an application to receive additional written statement as provided under Order VIII Rule 9 of the Code. Under Order VIII Rule 9, a defendant is not entitled to file an additional written statement without the leave of the court. Leave of the court is mandatory to receive a subsequent pleading. Affidavit in support of Ext.P3 application was filed not by the party but by their counsel. The reason shown was that because of the report submitted by the expert, it is necessary to file an additional written statement. It cannot be

said that contentions sought to the raised therein were not available to the petitioner at the time of filing of the written statement. In such circumstance, I do not find any reason to interfere with Ext.P2 order.

3. Under Ext.P5 order learned Sub Judge dismissed the application filed seeking direction to respondents to produce documents. Case of petitioners was that documents relating to chitty transactions are to be produced for a proper decision of the case. Learned Sub Judge found that application is filed only to protract the trial and according to the plaintiff the documents were not available with them. If documents are relevant and necessary to decide the question involved in that suit and if the documents throw light into the dispute or the controversy involved in the suit, it is for the plaintiff to produce the same. If plaintiff is in possession of the documents and is not producing the same, court can draw necessary inference against petitioner. Therefore, I do not find any reason to interfere with Ext.P5 order also.

4. Under Ext.P7 order learned Sub Judge refused to send the document to another expert. In Ext.P6 application petitioner sought a direction to send the document to an expert for getting an opinion on the age of the stamp affixed and cancellation of stamps in the document. Opinion of an expert is not necessary for deciding the dispute on those aspects. In such circumstance, I do not find any infirmity in Ext.P7 order also.

5. Petitioner is entitled to challenge the genuineness of stamp paper or cancellation at the time of recording the evidence. Petitioner is also entitled to cross examine the expert who filed the report, if so advised. Even without an additional written statement, petitioner is entitled to contend on the validity of the rate of interest provided in the instruments. If raised learned Sub Judge is to consider the validity of the instrument.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.